

IN THE UNITED STATES DISTRICT COURT FOR MARYLAND,
SOUTHERN DISTRICT

BEYOND SYSTEMS, INC.,)
Plaintiff,)
v.) Case No. PJM 08 cv 0921
WORLD AVENUE USA, LLC, *et al.*,)
Defendants.)

)

**AFFIDAVIT OF PAUL A. WAGNER REGARDING
DOMAIN NAME REGISTRATION AND DNS SERVICE**

I, Paul A. Wagner, state the following under oath:

1. I am over 18 years of age and fully competent to testify to the facts set forth in this Declaration. I make the statements below based on my personal knowledge unless otherwise indicated.

A. QUALIFICATIONS

2. I am president of Beyond Systems, Inc. ("BSI"), the plaintiff in this case. I incorporated BSI in 1996. Since that time BSI has provided Internet connectivity and interactive computer services, including electronic mail service, to many users (in the thousands), including many users (in the hundreds) in Maryland. BSI provides Internet services, technology consulting, and advanced research on emerging technologies. BSI has physical control over and access to its own hardware, which BSI owns, houses, maintains, and configures. BSI operates its services on its own sites, and pays hundreds of dollars per month to three (3) separate upstream

providers for ISP-level connections to its three (3) Points Of Presence, which are located in Silver Spring and Rockville, Maryland, and in the District of Columbia.

3. BSI performs services that provide or enable computer access by multiple users to a computer service. This includes, without limitation: enterprise architecture; distributed applications (scalability, failover, cross-platform); wireless initiatives (access, solutions, P2P, mobile computing); Internet security (spam, PKI, VPNs, firewalls, survivability); network support (LAN and client/server setup, support & management), which means activities, methods, procedures, and tools that pertain to the operation, administration, maintenance, and provisioning of networked systems, from troubleshooting outages to providing wired-to-wireless failover connectivity for clients; and management (strategic planning, marketing, CRM, supply chain). BSI also provides Internet access and hosting services for multiple users. This includes e-mail servers, web servers, DNS servers, file transfer (a.k.a. FTP) servers, database services, e-commerce services, port forwarding and backup services. BSI pays a monthly fee to Card Services International for its Merchant Account to handle purchases by electronic checks and credit card. BSI has hosted approximately 110 domain names for use by BSI and/or its clients and it assigns IP addresses it owns to clients for their use in accessing and providing services via the Internet. BSI provides Internet services to at least 326 persons. In the past, BSI has provided Internet services to at least 147 other persons.

4. BSI provides email accounts through its domain names, including hypertouch.com, beyondsystems.net, castalia.net, safemailbox.com, safemailbox.net and third-party domains. BSI has hosted servers for at least 45 corporate entities including at least 17 in 2008. Clients have included Fortune 500 companies, a mental health services provider, a custom bike shop, a film production company, technology companies (including other ISPs), sole

proprietorships, hotels, boarding houses, law firms and doctors. For example, BSI has provided email, web and DNS services for Colorvivo Films for over 8 years. BSI was the original upstream connectivity provider for St. Lukes House ("SLH") and the Solar Electric Light Company ("SELCO"), connecting them to the Internet via dedicated ISDN lines to BSI in DC then out to the Internet via BSI's dedicated T-1 line.

5. BSI provides upstream connectivity for the websites belonging to businesses named Pronto Labels (at <http://www.prontolabels.com>) and Prince I and Prince II Hotels in Vietnam (at <http://www.princehotelhanoi.com>). This means BSI hosts the servers on high-speed lines that enable these and other businesses to acquire and transact with customers.

6. BSI additionally provides electronic mailing list services. For example, over 1,000 subscribers have joined BSI's DC Events list, where members exchange information about local events relating to culture or policy.

7. BSI provides DNS and secondary mail server services for 219 employees and volunteers of St. Luke's House, Inc., as well as emergency upstream connectivity during outages. St. Luke's House, located in Bethesda, Maryland, provides comprehensive mental health services for adults with serious and persistent mental illness and youth with serious emotional disabilities. In cases of equipment failure or inclement weather BSI has connected St. Luke's office to the Internet and/or delivered its email. BSI also supports the IT department at St. Luke's House during emergencies to help restore service. BSI has assisted St. Luke's this way during two known outages in the past 5 months alone.

8. I spend substantial man-hours running BSI's ISP business completely unrelated to litigation. My regular activities include provisioning, configuring and maintaining BSI's or clients' computers and infrastructure; supporting clients ad hoc who are trying to access the

Internet or a computer service; researching new technologies; gathering requirements from current or prospective clients; interacting with vendors for sales or support; responding to clients' email service issues, including computer crashes, server crashes, service slowdowns, and complaints about spam; and investigations of network abuse (such as spam). I work 80 to 100 hours most weeks, usually addressing ISP-related tasks.

9. I routinely work with domain names in several ways during the normal course of running an ISP. BSI provides DNS, among other services. BSI's mail servers perform DNS lookups to in order to locate and authenticate the computers that connect to it or to which BSI connects. BSI's staff, and our colleagues, use and discuss domain name registrations and DNS frequently, sometimes in an effort to identify and to recognize senders of emails.

10. As a result of my experience described above, I am familiar with the operation of the Internet at a fairly technical level, and understand DNS services. A domain name can be used in two common ways: to provide information about its registrant, and to provide domain name service ("DNS") for the various machines ("hosts") on that domain. DNS translates a domain name meaningful to humans (e.g., www.yahoo.com or mail.yahoo.com) into the numerical identifiers (IP addresses) associated with network equipment for the purpose of locating and addressing these devices worldwide. Domain names (including BSI-hosted domains) depend on DNS to be useful.

11. BSI uses a domain name registrar named CSL Computer Service Langenbach GmbH (a.k.a. Joker.com). BSI provides DNS, serving as the "phone book" for the Internet on behalf of certain clients by translating the human-friendly computer hostnames that denote their Internet presence into IP addresses. Generally the registrars and DNS providers charge a fee to whoever owns or controls the domain name.

B. DOMAIN REGISTRATIONS AND DNS DATA

12. As shown in more detail below, and in the attached exhibits, the World Avenue companies (collectively, "World Avenue") rely on a corporation known as eNom for domain name registration, and on Tiggee, LLC (a.k.a. DNSMadeEasy.com, or "Tiggee") for DNS.

13. Ordinarily the registrant of a domain name may be found by performing a "Whois lookup" on that domain, using any of several free services available on the Internet. This process is referred to by Mr. Job of Tiggee in his response dated January 10, 2010. Other times, the registrant misrepresents or obscures its identity in the domain name registration. This practice has been used for many of the domain names associated with the emails that give rise to this suit. For example, the domain name, "SuperbRewards.com" appears in many of the emails that form the basis for the claims asserted in this suit, and is linked to World Avenue. I have found, as explained in more detail below, that this domain name is still in active use today and runs on World Avenue's web server. However, a Whois search for this domain name returns the following purported registrant identity [Exhibit A01]:

Superb Rewards . . .

13762 W. SR. 84 Suite 612
Davie FL 33325

14. Exhibit A01 shows that eNom is the registrar and that Tiggee provides DNS for the "SuperbRewards.com" domain name. It also shows an example of DNS (at the top of the exhibit), and shows that during the lookup a host name was translated to an IP address: "mail.superb rewards.com = [213.200.112.198]"

15. I have reviewed the domain names in emails that form the basis for the claims in this case, and I have used publicly available tools (including the free Mozilla browser add-

on, called "HTTP Live Headers" and the utility that comes preinstalled on Apple computers, called "curl") that have allowed me to observe redirections that follow my clicking on a sales link, as further described below. Those domain names and redirections end up at websites at IP addresses assigned to World Avenue. As shown below, since at least as early as 2005, World Avenue has registered many of its domains under a) what I found to be false or misleading identities or b) proxy registrations, often under privacy registration services.

16. As exemplified below, many of the emails that give rise to this suit contain the purported name and address of somebody who participated in sending the email at the bottom of the message body, together known as the "CAN-SPAM address" (because CAN-SPAM is widely understood to require the sender's physical address to appear in the email). Many of the emails at issue contain names and addresses not registered with the state of Florida that were used by World Avenue; ultimately I was able to link some of the addresses to at least six (6) Commercial Mail Receiving Agencies ("CMRAs") used by World Avenue. These addresses are usually at UPS Stores (formerly Mailboxes, Etc.); I have not found any to have been registered with the state of Florida.

17. Below is a list of Bates numbers of sample emails at issue and the CAN-SPAM addresses that appear in the email:

(UPS Store: <http://www.theupsstorelocal.com/3102/>)
SPAM-W064437: Your Smart Rewards, 4846 N. University Drive #323, Lauderhill, FL 33351,
SPAM-W065969: ProductOpinionPanel, 4846 N. University Drive #323, Lauderhill, FL 33351,
SPAM-W036865: Superb Rewards, 4846 N. University Drive #323, Lauderhill, FL 33351,

(UPS Store: <http://www.theupsstorelocal.com/2807/>)
SPAM-W058614: Superb Rewards, 123 N. Congress Ave. #351, Boynton Beach, FL 33426
SPAM-W064147: My Cool Rewards, 123 N. Congress Ave. #351, Boynton Beach, FL
SPAM-W066693: Americas Top Brands, 123 N. Congress Ave. #351, Boynton Beach, FL
33426
SPAM-W066682: America's Top Brands, 123 N. Congress Ave. #351, Boynton Beach, FL
33426

SPAM-W066692: America's Top Brands, 123 N. Congress Ave. #351, Boynton Beach, FL 33426

SPAM-W066698: America's Top Brands, 123 N. Congress Ave. #351, Boynton Beach, FL 33426

SPAM-W058614: Superb Rewards, 123 N. Congress Ave. #351, Boynton Beach, FL 33426

SPAM-W066598: Top Consumer Gifts, 123 N. Congress Ave. #351, Boynton Beach, FL 33426

SPAM-W057875: Gift Online, 123 N. Congress Ave. #351, Boynton Beach, FL 33426

(UPS Store: <http://www.theupsstorelocal.com/3227/>)

SPAM-W058103: Consumer Incentive Promotions, 14545 J Military Tr. #189, Delray Beach, FL 33484, USA

SPAM-W067429: Incentive Reward Center, 14545 J Military Tr. #189, Delray Beach, FL 33484

SPAM-W065946: My Choice Rewards, 14545 J Military Tr. #189, Delray Beach, FL 33484

SPAM-W067346: MyChoiceRewards, 14545 J Military Tr. #189, Delray Beach, FL 33484

SPAM-W060364: eMarket Research Group, 14545 J Military Tr. #189, Delray Beach, FL 33484

(UPS Store: <http://www.theupsstorelocal.com/4441/>)

SPAM-W068256: National Survey Panel, Customer Service Department, 13762 W. SR. 84, Suite 612, Davie, FL 33325.

(UPS store: <http://www.theupsstorelocal.com/4549/>)

SPAM-W060417: Hot Gift Zone 13900 Jog Rd. Suite 203-251 Delray Beach, FL 33446

SPAM-W057633: Exclusive Gift Cards, 13900 Jog Road, Suite 203-251, Delray Beach, FL 33446

SPAM-W042699: National Survey Panel, 13900 Jog Road Suite 203-251, Delray Beach, FL 33446.

SPAM-W057866: National Survey Panel, 13900 Jog Rd, Suite 203-251, Delray Beach, FL 33446

(U.S. Post Office)

SPAM-W064248: GetSpecialGifts P.O. Box 244285 Boynton, FL 33424

18. For the above list of emails, the same street address is used for several unregistered trade names. Those trade names appear in URLs that lead to World Avenue websites. For example, www.nationalsurveypanel.com takes one to IP address 213.200.112.198, which is found via Whois lookup to be assigned to Bravatas LLC, a defunct World Avenue company, as shown in Exhibits A15 and A16, attached. This demonstrates that DNS mapping is not private.

19. In my research, the domain name of the advertised site often coincided with the trade name provided in the CAN-SPAM address of the emails at issue. The registrations of the advertised domains typically changed over time. For example, the domain name "YourSmartRewards.com" (e.g., corresponding to SPAM-W066962) was registered as usual to itself with the following address in 2005:

Your Smart Rewards
4846 N. University Drive #323
Lauderhill, FL 33351

and the following address in 2006:

Your Smart Rewards
123 N. Congress Ave. #351
Boynton Beach, FL 33426

20. Since World Avenue rarely identifies itself in its domain name registrations, we have not been able to confirm World Avenue's ownership or control of many of these domains directly, but rather circumstantially and relying on other sources (such as the Florida attorney general) who traced these and similar domains to World Avenue and other methods (such as clicking on live links).

21. The domain name registration data from eNom would enable BSI to directly confirm emails already attributed to World Avenue and identify emails which are suspected of being part of the abuse caused by World Avenue but for which it would otherwise be difficult to attribute to them directly. Moreover, BSI would use this information to confirm that the domains were registered to non-existent entities, thus constituting false, misleading, misrepresented or obscured information about the origin or transmission path.

22. The DNS information from Tiggee (mapping domains to IP addresses) would similarly allow BSI to confirm attribution and deception as to the emails, and would confirm that

the advertised web sites ran on IP addresses assigned to World Avenue. Without this DNS information, it would be much more difficult, if not impossible, to tie these advertised, public web sites to World Avenue.

23. In my experience reviewing spam complaint registries online, I have observed that persons wishing to lodge complaints against the facilitators of unwanted emails frequently direct their complaints to DNS service providers and other enablers. It is well known that, for a successful advertising campaign based on thousands or millions of emails, there must be functional Internet services, one of which is DNS, which take the recipient from the email through intermediate servers to the destination web page ("landing page"). Thus, it is likely that persons complaining about unwanted email in World Avenue's marketing campaigns would send complaints to Tiggee.

24. Both eNom and Tiggee transact with "thousands of customers worldwide" [www.dnsmadeeasy.com/s0306/pol/smtp_abuse.html] and millions of unknown users, and therefore conveniently store their data in databases. I expect this information from eNom and Tiggee will be more reliable and complete than what World Avenue would provide.

25. I have observed that World Avenue's web sites are set up for rapid "rebranding" to themselves -- i.e., they take the incoming domain name and make it the company name for the site's Terms and Conditions. As part of my observations, I ran a Google search for the phrase, "operated by net radiance" which yielded 715,000 web sites, many of which are substantially the same. (Exhibit A02, attached, shows that "Net Radiance" is a fictitious business name of TheUseful, LLC of Sunrise, FL.) I regard this rapid rotation of domain names and trade names to be classic "snowshoe spamming," as described by an anti-spammer registry known as Spamhaus:

Like a snowshoe spreads the load of a traveler across a wide area of snow, snowshoe spamming is a technique used by spammers to spread spam output across many IPs and domains, in order to dilute reputation metrics and evade filters.

Snowshoers use many fictitious business names (DBAs), fake names and identities, and frequently changing postal dropboxes and voicemail drops. Conversely, legitimate mailers try hard to build brand reputation based on a real business address, a known domain and a small permanent range of sending IPs. Snowshoers often use anonymized or unidentifiable whois records, whereas legitimate senders are proud to provide their bona fide identity.

[<http://www.spamhaus.org/faq/answers.lasso?section=Glossary>]

26. The domain name registration and DNS information will aid in proving the pattern and practice of deception and intent in World Avenue's advertising practices. It will give BSI the information needed to penetrate the numerous false business fronts, defunct yet still operating corporations and shell corporations that World Avenue has started using to avoid responsibility, especially after they received numerous inquiries by multiple attorneys general and government agencies.

27. In the past, World Avenue domain names or unregistered trade names appeared in the body of the emails promoting its incentive awards web sites. The trade name often could be derived from the domain name by removing the ".com" or other TLD and inserting spaces between the names. Sometimes the trade name appeared in the From: field.

28. I have observed that World Avenue's domain names appear not only in the emails themselves, but in also in the sequence of redirections to the destination web page. When I clicked on sales links in selected emails, my browser followed a series of redirection commands, in a pattern typical of promotional emails: the email contains a "sales link" which is a URL (a.k.a. a hyperlink) that connects first to the sender's site, immediately redirects to the ad network's site and then arrives at the advertiser's site. World Avenue acts as both ad network and advertiser, where the email ostensibly offers a "free laptop" or other prize, but what is really being promoted is World Avenue's incentive awards program. The World Avenue domain name

appears in the intermediate and/or final destination URLs (ad network or advertiser sites) to which the sales URLs redirect.

29. During late 2009 and early 2010 I have observed that it has become more difficult to recognize World Avenue domain names, even using indirect methods. While many of the older but still active World Ave domains are not privately registered (though they are registered under false identities), World Avenue has added a "privacy" layer to its newer domains. In 2009, World Avenue began making wholesale use of proxy (a.k.a. "private") domain name registrations. This makes it impossible to identify the registrant without a court order, unless the email is examined shortly after receipt while its links are still functional ("live") – and as long as the servers run on IP addresses publicly traceable to World Avenue.

30. For example, on 16 Oct 2009 BSI received a UCE whose sales link redirected through the following sequence of World Avenue sites:

... [sender's sales URL in the email] -->
http://network.kitaramarketplace.com/... [ad network's site] -->
http://coolpremiumsnow.com/... [advertiser's site]

World Avenue operates both the ad network and advertiser sites. Kitaramarketplace.com is registered to Bristol Interactive, LLC, which is one of Intrepid Investments' companies collectively pursuing email-based lead-generation and is located at St. Thomas in the U.S. Virgin Islands. [Exhibit A03 and A04] Niuniu Ji is founder and CEO of Intrepid Investments, LLC. [Exhibits A07 and A08] Dozens of other employees likewise work for multiple Ji companies. [As examples, see Exhibits A09 and A10.]

http://coolpremiumsnow.com is serviced by eNom (as registrar) and Tiggee (for DNS); http://coolpremiumsnow.com resolves to 69.17.220.125, which is publicly assigned by Cable and Wireless of Bermuda to World Avenue LLC (a non-existent company). [Exhibits A11 and A12]

coolpremiumsnow.com's privacy page link goes to cool-premiums-now.com (with hyphens), which is an active site and says "Welcome to the Cool-premiums-now.com Web site (hereinafter the 'Site'), operated by Reliant ('Company')." [Exhibit A13]. "Reliant" is not a registered trade name or fictitious business name in Florida. cool-premiums-now.com resolves to 213.200.112.198 [Exhibit A14] and runs on a server at Bravatas LLC (an inactive Ji company) in Boca Raton, FL. [Exhibits A15 and A16]

31. Tiggee produces the information BSI seeks -- i.e., the mappings between World Avenue domain names and IP addresses -- to anyone who requests it for a given domain name or a given IP address. Third-party services such as DomainTools.com and DailyDomains.org are able to record at least some such information from Tiggee daily. [Exhibits A17]
DailyDomains.org detected the appearance of coolpremiumsnow.com and cool-premiums-now.com on Tiggee's servers on 09/10/2009, roughly one month prior to the actual use of those two domain names by email sent to BSI. [Exhibits A18]

32. The above information demonstrates that World Avenue's assertion in its Motion to Quash BSI's subpoena that Tiggee keeps DNS information confidential is incorrect. World Avenue asserts:

The private Domain Names were disclosed to DNS Made Easy in the strictest confidence. DNS Made Easy's Privacy Policy represented WAUSA's "personally identifiable information" would be kept confidential.

I have retrieved the privacy policy of DNS Made Easy, which contains the following language:

- DNS Made Easy may send personally identifiable information about you to other companies or people when:
 - ...
 - o We respond to subpoenas, court orders or legal process; or
 - o We find that your actions on our web sites violate the [DNS Made Easy Warranty and Disclaimer](#), or any of our usage guidelines for specific products or services.
- [Exhibits A19]

33. One World Avenue company, Kitara Media, states on its website that it uses its domain names online for "serving millions of impressions." [Exhibit A05] Another World Avenue company, TheUseful, proclaims that its clients "enjoy[] 3 million leads every month," without mentioning the number of impressions made to cause this. [Exhibit A06] All the domain names that turn up in the 715,000 web sites by running the Google search for "operated by net radiance" are exposed to the public. The domain name "SuperbRewards.com" is among the 715,000 and, like other domain names, gets DNS from Tiggee. "SuperbRewards.com" is registered to the following registrant [Exhibit A20]:

Registrant Contact:
Superb Rewards
Customer Service ()
Fax:
13762 W. SR. 84 Suite 612
Davie FL 33325

"Superb Rewards" is an unregistered name in Florida. It was held by Jinius Corporation (an active FL corporation) from Nov. 2005-Jan. 2007. [Exhibit A21] www.superbrehards.com is hosted at 213.200.112.198, which like IP addresses in 66.7.179.* and 213.200.112.*, are assigned to the defunct Bravatas LLC. [Exhibit A20]

34. I do not understand World Avenue's concern about the possibility that a competitor might "reverse-engineer the business" [per the affidavit of Rob Erie] based on World Avenue's domain name alone; the domains all relate vaguely to incentive awards. World Avenue pays to privately register domain names even after they have been heavily used.

35. DNS for World Avenue's domains is inherently public. However, BSI has no way to identify all domain names of World Avenue (including its sister companies). I initiated a reverse IP search using DomainTools for the first of the 715,000 World Ave web sites (i.e.,

"simplified4u.net," which is hosted at 66.7.179.198), resulting in a list of 1,284 domains likewise hosted at that subnet. [Exhibits A22] Similarly, a reverse IP search for cool-premiums-now.com, which is hosted at 213.200.112.198, turns up a list of 1,833 domains likewise hosted at that subnet. [Exhibits A23]

36. From the above information, I determined that there are thousands of domain names that World Avenue presently hosts on its own IP addresses, in addition to the DNS mappings performed by Tiggee. These domain names are readily viewable to the public. I perceive ambiguity with the IP addresses, in that (1) World Avenue has asserted that it provides services to "customers" it refuses to identify (which I suspect are sister companies) so that it is possible that some of these domains might not be used by World Avenue, and (2) World Avenue might control additional, super-private domain names elsewhere, such as on IP addresses that are not properly registered with the appropriate registry so as to reveal their true assignee. I perceive ambiguity with Tiggee's DNS in that although the DNS mappings (and the thousands of web sites reflecting that mapping) are all public, it is difficult to determine which domains pertain to World Avenue.

37. What Tiggee provides is the service that essentially offers to the public the public "phonebook" entries on behalf of World Avenue for the entire Internet to see. BSI seeks from Tiggee information which is available and given out to anyone -- if the requestor knows what to ask. BSI needs this information from Tiggee in part because (a) there are 192 million domain name registrations [<http://www.verisign.com/domainbrief>] and so Tiggee must identify which of these have related to World Avenue, and (b) Tiggee has set their DNS servers to deny the efficient and customary DNS zone transfer of the domains they host, necessitating a unique

request for each record type of each domain and subdomain. Each record is publicly viewable if one knows which domain or subdomain to ask for, as many users do.

38. I disagree with World Avenue concerns over a competitor's use of DNS data. The false assumption is that it would take a competitor a long time to launch a website with a similar domain name. Rather, a competitor could rebrand a web site at a moment's notice, as World Avenue does, by simply changing the domain name of the site and the trade name listed in it. Thus, whenever this competitor got word of a World Avenue web site that was generating great "untold business," the competitor could immediately create its own brand. Having the list of World Avenue domains from Tiggee before they are successful would give no added benefit.

39. BSI also needs the requested data to confirm that the new World Avenue companies are using the same eNom and Tiggee service(s) with the same account(s) as the old companies do, so show continuity of operations.

40. BSI also needs complaints and other communications about use and abuse of the domain names, which are not available publicly.

41. All of the attached documents from the website of the Florida Secretary of State are accurate copies of screen shots and documents downloaded from the official FL SOS website.

42. All of the attached documents from websites other than the website of the Florida Secretary of State are accurate copies of the screen shots and documents they purport to represent, and can be viewed at the URL printed at the bottom of the page. Last viewings were as of the date printed at the bottom of the page.

I provide the following declaration I declare under penalty of perjury that the foregoing is true and correct.

Date: February 22, 2010

By: 